IN RE ARBITRATION BETWEEN:

AMALGAMATED TRANSIT UNION, LOCAL 1005

and

METROPOLITAN COUNCIL

DECISION AND AWARD OF ARBITRATOR
BMS CASE # 06-PA-1182

JEFFREY W. JACOBS

ARBITRATOR

August 28, 2006

IN RE ARBITRATION BETWEEN:

Amalgamated Transit Union, Local 1005,

and

DECISION AND AWARD OF ARBITRATOR
BMS Case # 06-PA-1182

Metropolitan Council.

APPEARANCES:

FOR THE ASSOCIATION:

Roger Jensen, Jensen, Bell, Converse & Erickson
Michael J. Ryan, grievant

FOR THE METROPOLITAN COUNCIL:

Andrew Parker, Smith & Parker
Matthew Walker, Met. Council Police Officer
Dennis Dodge, Safety Specialist
Mark Johnson, Mgr. of Heywood Bus Operations
Sam Jacobs, Director of Bus Transportation

PRELIMINARY STATEMENT

The hearing in the above matter was held on August 10, 2006 at 9:30 a.m. at the offices of Smith and Parker in Minneapolis, Minnesota. The parties presented oral and documentary evidence at which point the hearing record was closed. The parties waived post-hearing Briefs and argued the matter orally at the hearing.

ISSUE PRESENTED

Was there just cause to issue a Final Record of Warning to the grievant on August 27, 2005? If not what shall the remedy be?

CONTRACTUAL JURISDICTION

The parties are signatories to a collective bargaining agreement covering the period from August 1, 2005 to July 31, 2008. Article 5 provides for submission of disputes to binding arbitration. The arbitrator was selected from a list provided by the State of Minnesota Bureau of Mediation Services. At the hearing the parties stipulated that there were no procedural or substantive arbitrability issues and that the matter was properly before the arbitrator.

POSITIONS OF THE PARTIES

EMPLOYER'S POSITION:

The Employer's position is that there was just cause to issue the Final Record of Warning for the grievant's conduct in hitting another vehicle while operating his bus on August 27, 2005. In support of this position the Employer made the following contentions:

1. The grievant is a driver for the MCTO and has a very poor driving record despite having been given specific driving training on the safe operation of his bus on multiple occasions. The Employer emphasized that safety is the number one priority in their operations and that most of their drivers are very safe drivers. The vast bulk of them receive safe driving awards every year, i.e. some 1200 out of approximately 1300 drivers get these awards. In addition, many have been driving for over 25 years without a single chargeable incident on their record. The grievant is not one of these people.

2. The Employer placed into evidence the record of the drivers training the grievant has received over time including the so-called 5-point defensive driving system. In addition, the grievant took and supposedly passed his training and passed his final safety review, Employer Exhibit 13. The grievant acknowledged his responsibility to follow carefully the steps necessary to operate his bus, including pulling away from the curb, backing it and operating it in traffic and around the station.

3. Despite this extensive training, which occurred on several occasions, including following the accidents he has had, the grievant has had 3 responsible accidents involving a bus, prior to the incident in question. He backed into a taxicab that was stopped directly behind his bus in July of 2005. See Employer exhibits 17, 18 and 19. He hit a pole and damaged a bus in August of 2004, see Employer Exhibit 16 and in early 2003 allowed his bus to slip into the curb during wintry conditions and hit a pole that also damaged the bus. See Employer Exhibit 15. He was given additional training after these incidents.

4. Pursuant to the Employer's policy for operating thresholds, Employer Exhibit 20, the grievant's conduct should have warranted discharge here. However due to some sort of oversight, the grievant was not given an appropriate warning for the August 2004 incident thus necessitating the Record of Final warning being given for this incident rather than a discharge. Pursuant to that policy, 4 responsible accidents in a rolling 3-year period results in discharge. Here due to that error, the Employer is essentially giving the grievant a break otherwise he would be facing dismissal right now.

5. Turning to the incident in question, the Employer argued that on August 27, 2005 Metro Transit Police received a report from the Minneapolis Police Department that a motorist had called them to report that a MCTO bus had hit her vehicle. This was reported as a business record on an SSR, Special Situation Report. The caller was very specific and reported that the accident had happened at 4:20 that day, a Saturday, on Central Avenue and 24th St in Minneapolis. The caller, who was apparently the driver's daughter reported that the accident involved a #10 bus that was southbound and that the bus had pulled into her vehicle damaging the front passenger fender while pulling out from the curb into traffic. The Employer noted that the SSR reports reflect exactly what the caller says. The Employer rejected outright the Union's suggestion that this report is not accurate or that someone told the caller that it was a #10 route. The Employer argued that the caller knew that a #10 bus had hit her because she called and told them exactly that.

6. Metro Transit Police were sent to investigate. It was determined that there were two buses on the #10 route southbound who could have been in the area at anywhere near the time in question, the #909 bus and the grievant's bus #873.

7. Transit Police went to the woman's home that had reported the accident. The victim was an elderly lady, DOB circa 1919, and she reported that the bus had hit her front fender. They observed fresh damage including some black scuffmarks on her fender and a dent that went from the wheel to the front of the car.

8. They then went to view the grievant's bus and bus #909. Initially, due to an inaccurate report given the first group of transit police who were dispatched to the view the grievant's bus, police only viewed the front of the grievant's bus. They saw no damage. They also viewed #909 and found no damager there either. Later upon a second view of the grievant's bus it was discovered that indeed there was fresh damage to his bus on the rear driver's side bumper as well as some paint transfer of white paint. The victim's car was white as well and there was a scuffmark on the bus bumper that also was coincidentally black. There was no dent on the grievant's bus but apparently some fresh "cleaning" of dust and grit off of the radiator cover near the rear bumper.

9. The damage appeared to be at about the same level on the bus as the officers had observed on the victim's car. It was apparent very quickly that the grievant's bus had indeed come into contact with the woman's car and that he drove away without apparently knowing it.

10. The Employer argued that the grievant's pattern of careless driving should be considered given his penchant for lapses in following the rules of driving and for hitting fixed or stopped objects. Clearly, this is precisely what happened here: the grievant pulled away from the curb without checking his mirrors as he was supposed to, just as he had failed to do on several past occasions, and hit the woman's car.

11. The Employer argued that their driver's are always expected to maintain a cushion of space around their vehicles and to be cautious when pulling a bus into traffic so as not to hit anything or anyone. The Employer argued that this was lucky that it was not a pedestrian or bicyclist. The amount of damage was not material, even though some $1,100.00 was paid to the woman to repair her car. The essential feature of this accident minor though it was, is that the grievant failed to maintain a proper lookout and to clear his mirrors before pulling the bus into traffic on busy Central Avenue.

12. The Employer argued that the grievant's constant denials that he hit anything were disingenuous at best. He claimed that he passed #909 and that it must therefore have been that bus that hit the lady. The GPS system proved that he never passed #909. Even though the GPS records are no longer available, Mr. Johnson gave credible testimony that he reviewed it, as did the Union steward and concluded that #909 was so far away there was no way it could have been involved. Moreover, no damage was found on #909 thus destroying the grievant's story and his credibility. The Employer argued that it is beyond doubt that the grievant's bus struck the lady's car.

13. Countering the Union's argument that the absence of the lady who called in was fatal to the Employer's case, the Employer argued that it did not need her and that it would be highly inappropriate to call her. She is now 87 years old, frail and very reluctant to come into a hearing like this. Moreover, given all of the corroborating evidence in this matter, such as the damage done to the bus and the car, the call in itself, the GPS record showing the grievant's bus at the exact location and time she said it was, there is no question that the accident occurred.

14. The Employer countered the Union's argument regarding the failure to test the paint samples taken from the bus by noting that the Bureau of Criminal Apprehension was unwilling to perform such tests. The Union's claim that there must be other labs out there was unsubstantiated by evidence and should not be considered. Moreover, all the paint samples would have shown was a match to the general year, make and model of the victim's car and would not in and of itself establish an absolute match. It was thus determined that further testing of the paint was a waste of time.

15. The Employer introduced the tape from the bus that shows the actual accident in question. The Employer argued that it can clearly be seen that the grievant's bus never passes another bus. It later shows that the grievant pulls out into traffic sharply and that horns sound as a result. The victim's car can be seen being hit by the bus as the grievant pulls away into traffic. Based on this tape and the other evidence it is clear that despite the grievant's denials, the accident occurred exactly as the victim said it did.

16. The essence of the Employer's case is that when all of the evidence is considered as a whole the evidence shows that the accident happened as the victim alleged. The "failures" of investigation raised by the Union are specious and unsupported. There was no need to measure the height of the vehicles as one could plainly see that the damage done to both vehicles was at the same height. There was no need to test paint chips, as it would not have established the particular car that was hit. Moreover, the BCA would not do it.

17. Finally there was no need to bring the lady in as the MCTO is very reluctant to bring in members of the public to testify in these types of affairs. There was ample evidence on the record of hard objective evidence to establish that her story is the accurate one and that the grievant failed to operate his bus properly. He must therefore be given the Final record of Warning that was issued here.

The Employer seeks an award denying this grievance in its entirety.

UNION'S POSITION

The Union's position was that there was no accident here at all and that the Employer failed to produce sufficient evidence of a chargeable accident for which the grievant can be held responsible under the facts of this matter. In support of this position the Union made the following contentions.

1. The Union and the grievant stated flatly that the grievant was not involved in a collision with his bus on August 27, 2005. The grievant claimed from the very outset of the hearing and from the grievance process that he was not involved in that accident as the lady claimed.

2. The grievant claimed that he passed bus #909 en route sometime during the southbound run on Central, likely near Central and Lowry or Central and 24th. He claimed he did not stop at 24th as the lady claimed and that it must have been some other bus that collided with her vehicle.

3. The Union claimed that there are other MCTO buses on Central including #909 as well as other types of buses that sometimes use the MCTO bus stops. These include casino buses or Metro Mobility buses and even other types of buses many of which are white as well. Any of these could have been the one that collided with the woman who called to claim this accident.

4. The Union further claimed that without her testimony, there was not even sufficient evidence of an accident much less who caused it or who was responsible for it. She was not called to testify and the Union claimed that this was a glaring and fatal weakness in the Employer's case.

5. More importantly, fundamental due process and fairness requires that a person whose job could well be on the line here (the Union acknowledged that a Final Warning was the last step before termination under the policy referenced above) be able to confront any witnesses against them. Here the only other eyewitness to the alleged accident was the lad who called in to report it. Without her, the grievant cannot cross-examine her account of the story for accuracy. Accordingly, the Union urged the arbitrator to reject outright any hearsay evidence of her side of the story.

6. The Union also pointed to what it claimed were multiple failures in the investigation and lack of foundation for the claim that an accident occurred. First, the GPS record for bus #909 is mysteriously missing. This would have established once and for all where it was at the time the alleged accident occurred and whether the grievant ever passed it as he claimed he did. All we are left with now is Mr. Johnson's claim that he reviewed the GPS record for #909 and that he never saw that the grievant's bus passed it. This is in stark contrast to the grievant's claim that he did.

7. Second, the police officers never actually measured the height of the lady's bumper to compare it to the actual measured height of the bumper on the grievant's bus. The alleged victim's car was observed at her home while the bus was observed at a different location miles away and nobody ever thought to measure the height of the bumper. That error was so glaring as to shock the consciousness. No self-respecting accident reconstruction expert at any level would ever expect that conclusions based on "eyeballing" the height would be accepted in any Court in any jurisdiction in the land and the arbitrator should not accept it here.

8. Third, there was no forensic analysis of the paint chips so meticulously scraped from the bumper of the bus to establish that they came from the victim's car. The Union alleged that even if the BCA did not perform such tests, there are many labs in and around the Twin Cities that could have performed this analysis. The Employer has the burden of proof in this case and the Union again argued that they did not establish that the paint from the car matched the paint found on the bumper.

9. The Union further pointed out that buses frequently have minor damage to them especially on the bumpers and that scrapes and small dents are commonplace. To say that finding a small scrape on a bumper on one of the hundred of buses is conclusive evidence of anything is simply without evidentiary support.

10. The Union further argued that the tape shows that the "victim" was actually at fault in the accident. The bus was shown pulling away from the curb and was moving not stationary as the victim alleged and that after a few seconds the bus had to brake to avoid hitting a car that had turned sharply in front to if. The horn on the tape is actually the bus horn, not horns from the cars. The car in the rear of the bus can be seen swerving toward the bus as if to make a right turn, not swerving to avoid the bus as one would expect if the bus had turned into it.

11. The Union also suggested that the lady may not have even known that it was a #10 bus. The Union posited that when she called in and gave the operator the information the operator may well have told her that it was a #10 route bus since it is a well known route along Central Avenue. Again, the Union claims that one will never know whether this is the case or whether the lady actually saw #10 and could in fact verify that number since she was not called as a witness in the matter.

12. The essence of the Union's claim is thus that there was insufficient evidence to even establish a collision between the grievant's bus and the lady's car. The Union points to the many errors in the investigation and lack of evidence of any collision at all. Moreover, the Union claimed there was no evidence the grievant was at fault in this accident. The Union claimed that the tape shows quite the contrary if it shows an accident at all.

13. The Union claims that even though this matter is about a final warning it is crucial to the grievant's employment since it is apparent that the Employer's next step with any small infraction is to terminate the grievant. Three will thus never be another opportunity to fully litigate the fact of this matter to clear the grievant's record of this warning and preserve his employment.

Accordingly the Union seeks an award of the arbitrator sustaining the grievance and expunging the Final Record of Warning from the grievant's personnel file.

MEMORANDUM AND DISCUSSION

The stories related by the Employer and the grievant could not be more divergent in this matter. The Employer alleges that the grievant failed to keep a proper lookout and to make sure his mirrors were clear before moving into traffic on the date in question and that he struck a motorist with his bus. The grievant not only denies that he failed to keep a proper lookout but also in fact denies that the accident ever happened. He claimed that he passed his leader, bus #909, and that it must have been the bus involved in the accident. The grievant further pointed to what it claimed were a multitude of errors and shoddy investigative technique in the case.

This is a matter where some of what both parties alleged was true. The question is whether the grievant failed to merge his bus into traffic and whether indeed it was his bus that struck a motorist at or near 24th and Central Avenue on August 27, 2005.

The Union alleged that much of the Employer's case was circumstantial and that there is no "hard" evidence or testimony that an accident even occurred. Without the woman who claimed this accident happened there is no proof that any such accident occurred and the whole matter must be thrown out.

Certainly, if the only piece of evidence the MCTO had was the fact that a woman called in to report the accident the Union would be right. There was some merit to the Employer's argument that there is both circumstantial as well as tangible hard evidence to support the claim that the grievant struck her car.

First, there is the fact that she did call. The Union did not claim that the call was not made or that it was somehow a hoax or a cruel prank. The evidence shows clearly that the call was made and that what the caller said was accurately taken down. Moreover, the parties have a procedure for receiving and verifying complaints made by members of the public. Employer Exhibit 20 in fact defines a "verified complaint" and calls for the consequences of the receipt of those. Thus, it is clear that these parties contemplate that people may call in and that their allegations will be investigated pursuant to the Policy. The procedure appears very similar to what was done here. Metro transit Police went to the woman's home, spoke to her directly, observed her car and verified that the complaint was in fact made.

Second, there is certainly some evidence to suggest that an accident occurred as the Employer alleged and contrary to the grievant's story. It was clear that there was fresh damage to the lady's car as the photos show. The Union argued that it could not be established that the height was the same. There was some merit to this argument frankly and if this had been the only piece of evidence to show that the accident occurred, the result would have been different. This arbitrator was not born yesterday and simply did not accept the argument that "eyeballing" it was enough. It is not.

Moreover it is certainly not sufficient to support the opinions of the Transit Police as to how the accident happened. There was no foundation whatsoever for the witness to establish that he was an accident reconstruction expert and the lack of even so much as a tape-measured distance was ample evidence of that. Thus, while it was clear that a recent impact had occurred to the lady's car and that there was also some apparent fresh scraping damage on the grievant's bus that was not enough on it's own to establish anything let alone an actual collision between the bus and lady's car.

Third, there was the much more compelling evidence that there was no apparent damage to bus #909. Had there been similar damage to that bus this case would again have quite possibly taken a different track. The Union raised no evidence that there was any damage to that bus.

Fourth, there was the very compelling GPS evidence regarding the whereabouts of the grievant's bus at the approximate time and location of this accident. The lady called in at 4:35 p.m. on August 27th. There is no dispute about that. She alleged that the accident happened at 4:20 that afternoon. A review of her address compared to the street map on Employer Exhibit 9 shows that this woman lived about 2 blocks from where she said the accident occurred. It is thus well within the realm of probability that she made the call exactly when the record shows she did and reported the accident accurately. While there was no evidence from her, the other evidence supported the Employer's allegation here. There clearly was damage to her car and some damage to the grievant's bus.

The GPS record shows that the grievant's bus was exactly where the lady said it was at the time she said it was there. The Union claimed that it would have been helpful to have had the GPS record of bus #909. This was a point well taken and might well have created considerable problems for the Employer under slightly different circumstances. To assume that one simply did not need it was an assumption that a thorough investigation would have dispelled.

Here however, the evidence showed that the Union too had access to and actually viewed the GPS record for #909 and yet chose not to copy it or have it for the hearing. Moreover, Mr. Johnson gave credible testimony that he reviewed it and found that at no point did bus #873 ever pass #909. As will be discussed below the tape from #837 verified that as well so there was more than just the GPS record to support the Employer's allegations here.

Further, the grievant claimed that #909 was 15 minutes behind schedule and that he passed it. This is found not to be credible on these facts. The record showed that the grievant was within less than a minute of when and where he was supposed to be. Bus #909 was dispatched 20 minutes ahead of #873 and there was evidence t suggest that this was not the case. If #909 had been 15 minutes late the grievant would still have been 5 minutes behind it. While these time frames are approximate they severely undercut the claim that the grievant passed #909. On these facts when taken as a whole it is clear that he did not.

Fifth, the Union claimed that it could well have been another bus that hit this lady. The Union raised specter that a casino or Metro Mobility bus or just some other bus that was white could have hit her and that there is no hard proof that it was the grievant's bus. The overall record however supports the Employer's claim. As noted above, there was ample evidence to show that the call was made and that it was transcribed accurately. While it would have been more helpful to the Employer's case to have the woman there to verify once and for all that she saw a Metro Transit bus #10 at 24th and Central; and that this was the bus that hit her, the record supports that story. MCTO buses do in fact have the numbers written on the back of them, as was demonstrate at the hearing itself. Thus, she could well have seen that the bus was a #10 bus. She certainly could be aware of what routes go down Central as the record clearly established that she lives one block off of Central and likely simply knows that.

Circumstantial evidence is not always suspect by definition and can even be more accurate than eyewitness testimony or the testimony of persons with some incentive to bend the truth. Here, there was nothing to suggest that an 86 year old lady would call in to report that she had been hit by a #10 MCTO bus for kicks or to play some joke on someone. Moreover, there was ample evidence to support her claims that indeed a collision did occur between her car and a bus, i.e. the damage to both vehicles. Finally, there was ample evidence to suggest from the GPS record and other evidence that it was the grievant's bus and not some other phantom bus that looked like it that was the bus involved in that collision. The evidence showed that the Union also reviewed the GPS record of #909 as well and while they apparently requested it later on, they did not seek to make a copy of it at the time. Moreover, the Union representative was not called to testify at the hearing to rebut the testimony of the Employer's witness that he had look at the GPS record and saw that #873 never passed #909. This too was a significant factor in the matter.

Finally, the Union argued that the Employer should have analyzed the paint chips that were found on the grievant's bus to determine that they were a match to the lady's car. Again while this would have been helpful, it was not necessary to establish that an accident occurred under the facts and circumstances of this case. The Employer provided credible testimony that no lab would do that kind of analysis. Moreover, even if one had been done it would have only established the year and general make and model of the car from which they were taken. It would not have established that it came from this particular car. True enough in all likelihood but under these circumstances it was clear that the paint did come from the lady's car and that an accident occurred. The fact that they were white is at least probative of this fact. An exact match was not needed. Finally, had the Union desired to have them tested it could certainly have done that to see if indeed they were not a match. Such evidence would certainly have been probative of the Union's claim that the grievant was not involved.

These facts, coupled with the fact that there was no damage to #909, when taken as a whole support the Employer's case by a bare preponderance of the evidence. The issues raised by the Union were certainly valid and in a different case with slightly different facts may well have swung the case the other way by showing that the totality of the evidence did not show that an accident occurred. Here however, while some of the Employer's case is circumstantial, the evidence when viewed as a whole shows that the grievant's bus was the bus that collided with the lady's car.

Contrary to the assumptions of the parties, that does not end the inquiry. The mere fact that an accident occurred does not establish that the grievant was at fault for it. The Employer attempted to show that the grievant has a pattern of driving carelessly and would have had the arbitrator make that assumption here based on his driving record. To be sure the grievant's driving record is not exemplary. It cannot be stated strongly enough however that this evidence has no bearing whatsoever on the question of whether this grievant was at fault for this accident this time. That must depend on the evidence and facts presented in this case.

Evidence of past transgressions may be relevant to the issue of remedy and the degree of discipline in certain cases, it is virtually never to be used to establish guilt or innocence of the present allegations. Just as an employee with an absolutely clean record may be guilty of a terminable offense on the first offense so too may an employee with an otherwise miserable disciplinary record be completely innocent of the current charges.

To determine this question the facts of this case, including most significantly the tape for the grievant's bus, must be examined in close detail. Initially, it must be said that the grievant's story did not pan out as he claimed. He alleged repeatedly that he passed his lead. The evidence showed that on this day at least, he did not. It would have been very helpful to the Employer's case to have the GPS record from #909 available to have established that without the need for other corroborative evidence. It was shown by other means however as noted above.

The tape was reviewed many times. The record showed that the time on the tape were somewhat skewed and were off by a few minutes but that relative to each other they were accurate. Thus the times were shown to be slightly off in comparison to the actual time. (Note that the record established that the accident in fact occurred at approximately 4:20 but that the tape shows in happening about 15 minutes earlier than that.)

The tape showed that the grievant boarded the bus at 3:54:30 and that he started the route at approximately 3:55:10. The details of what appears to be this actual accident will be discussed below; these occurred at 4:05:30 to approximately 4:05:50. He took on his first passengers at 4:06:48. He announced that he was at 18th, some 6 blocks from where the accident in question occurred, at 4:07:18. He announced that he was at 14th and Central at 4:05:15, less than a minute later. These small pieces of evidence also undercut the grievant's claims that he was not at the location of this accident as alleged. He was.

On this record however the most compelling piece of evidence was the tape itself. Indeed without it the grievance would have been sustained given the nature of the other evidence presented in this matter. This was reviewed many times including in slow motion and stop action to verify exactly what happened. It is clear that this accident was actually captured on the tape at the times noted above. The tape also shows that he never passed another bus as he alleged.

Moreover, as the tape passes 4:05:35 it shows him stopped at a bus stop. The shelter can clearly be seen. As he pulls away from the curb a small white car can be seen about at the middle of the bus. Just before 4:05:45 the bus is seen turning sharply to the right and that small white car, which appears to be the same make and model as the lady's car, is seen braking sharply. Horns are heard at about that same time and the bus and the car appear to collide very slightly as the bus pulls into the travel lane. The white car then disappears behind the bus and is not seen again. Whether a car turned or cut off the bus or not, the tape clearly shows the bus pulling sharply to the right to enter the lane of travel while the small white car is at or near the middle of the bus. In fact, the tape also quite clearly shows the bus *passing* the small white car.

It further appears that the car was stopped and the bus was moving past it when the bus made a turn into the travel lane into the car. That car would clearly have been visible in the bus mirrors. It appears that the grievant wanted to pull into traffic and was attempting to avoid parked cars along Central but did not look to see if anyone was in the travel lane when he did. MCTO policy is quite clear that a bus driver must make sure the travel lane is clear before entering it.

The grievant claimed that he braked to avoid a car that had turned illegally in front of him and that he sounded his horn. The tape does not show the front of the bus so the question of whether there really was such a car cannot be determined definitively. The tape clearly shows the grievant's bus past the intersection before he hits the brakes and before sounding the horn. As noted above, whether a car cut him off or not, the tape shows him swerving into traffic while the small white car was essentially next to him as he was passing that car. Therein lies the rub, figuratively and literally.

Truth is often times an illusive concept especially when people 's memories are tested to recall in excruciating detail events that they had little knowledge would be the subject of such scrutiny by attorneys and judges many months later. No one wakes up in the morning knowing that at exactly 4:05:35 in the afternoon an event will occur that could change his or her lives and to be prepared to recount every single detail of it.

Here the grievant's story simply did not pan out as he claimed based on the totality of the evidence as presented. The best that can be said is that it is more likely than not that the grievant turned into traffic without maintaining a proper lookout and adequately checking his mirrors.

The evidence showed that right of way notwithstanding, the drivers must yield to traffic and maintain proper lookout before pulling into traffic. The Union did not dispute this. Their claim was that the accident never occurred. It was clear that the grievant probably did not feel the impact, as it was very slight. This was shown even by Employer witnesses who testified that they did not believe the grievant could even have felt it or known he had hit this lady. That however is not the issue.

The issue is the failure to clear the mirrors before making this maneuver. The record shows that the grievant in fact struck the side of the lady's car while pulling his bus into traffic after leaving a stop at or near 24th and Central in violation of MCTO policy and driving instructions. The evidence thus shows that an impact between the grievant's bus and the lady's car occurred almost exactly as she reported it and that the accident was chargeable to the grievant's driving record. Accordingly, the grievance must be denied.

AWARD

The grievance is DENIED. The parties shall bear the costs of the arbitrator's fee equally as set forth in the statement attached to this Award

Dated: August 28, 2006

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ATU and Met Council – Ryan.doc

Jeffrey W. Jacobs, arbitrator